

AMENDED IN ASSEMBLY SEPTEMBER 2, 1999

AMENDED IN ASSEMBLY JULY 15, 1999

AMENDED IN SENATE APRIL 27, 1999

AMENDED IN SENATE APRIL 12, 1999

AMENDED IN SENATE APRIL 5, 1999

SENATE BILL

No. 974

Introduced by Senator Speier

February 26, 1999

An act to amend Sections ~~5900 and 11713.11~~ *11713.11* and *11729* of, and to add Section 11713.14 to, the Vehicle Code, relating to vehicles.

LEGISLATIVE COUNSEL'S DIGEST

SB 974, as amended, Speier. Vehicle auction.

(1) ~~Existing law requires the owner of a vehicle registered under the Vehicle Code who sells or transfers his or her title or interest in, and delivers the possession of, the vehicle to another, to notify the Department of Motor Vehicles within 5 days of the sale or transfer, as specified. Existing law also requires the owner to notify the department of the actual mileage of the vehicle as indicated by the vehicle's odometer at the time of sale or transfer. Existing law requires a registered owner who sells or transfers the vehicle through a dealer conducting a wholesale motor vehicle auction to furnish the specified information to that dealer.~~

~~This bill would require a registered owner who sells or transfers the vehicle through a dealer conducting any motor vehicle auction to furnish the information specified above to that dealer.~~

(2) Existing law prohibits a licensed vehicle dealer, when advertising one or more specific auction events, from advertising that a vehicle will be auctioned to the public unless specified information pertaining to the vehicle and the auction is disclosed in the advertisement. Existing law also prohibits the advertisement of vehicles seized by public agencies or authorities unless specific additional information is disclosed in the advertisement, and provides that it is unlawful for an auctioning dealer to fail to provide specified information on the day of the auction regarding a vehicle seized by a public agency or authority.

This bill would apply the above restrictions and prohibition to a dealer when conducting an auction of vehicles to the public.

The bill would additionally require disclosing in the advertisement whether a buyer's fee, as defined, will be charged to a purchaser, in addition to the accepted auction bid price, and, if the fee is a set amount, the dollar amount of that fee, and if the buyer's fee is not a set amount, the advertisement shall state the formula or percentage used to calculate the fee.

The bill would prohibit including in the total price of an auctioned vehicle any costs to the purchaser at the completion of the sale, except as specified.

The bill would prohibit a holder of a dealer's license, when conducting an auction, from charging a buyer's fee unless that dealer delivers to any person permitted to submit bids, and at a time prior to accepting bids from that person, a specified disclosure statement that is signed by the person.

The bill would specifically prohibit a dealer conducting an auction from failing to comply with or violating certain provisions of the Vehicle Code, Civil Code, Commercial Code, or Penal Code pertaining to auctions or any law administered by the State Board of Equalization relating to the auctioneering business.

Because a violation of these provisions is a misdemeanor under existing law, the bill would impose a state-mandated local program by expanding the scope of that crime.

The bill would grant a person who purchases a vehicle sold through a dealer at an auction of vehicles open to the general public the same rights and remedies against the dealer who conducts the auction sale as if that dealer were an owner and seller of the auctioned vehicle. The bill would provide that the purchaser's rights or remedies are in addition to any rights or remedies he or she may otherwise have against the owner of a vehicle sold at a public auto auction. The bill would provide for indemnification of the dealer by the consigning owner of a vehicle for any liability resulting from misrepresentations or other misconduct by the consignor. The bill would prohibit waiving or modifying the purchaser's rights and remedies set forth under this paragraph by an agreement or by recharacterization of the transaction.

~~(3)–~~

(2) Existing law requires any dealer engaging in a consignment with an owner, who is not licensed in a specified vehicle-related occupation under the Vehicle Code, and the consignment is not otherwise prohibited by that code, to execute a consignment agreement as prescribed.

This bill would exempt specified consignment agreement requirements when a dealer conducts retail auction sales of vehicles on behalf of a fleet owner, as defined.

(3) The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

Vote: majority. Appropriation: no. Fiscal committee: yes. State-mandated local program: yes.

The people of the State of California do enact as follows:

1 SECTION 1. The Legislature hereby finds and
2 declares all of the following:



1 (a) Motor vehicles have been sold to dealers and other
2 commercial purchasers through wholesale auto auctions
3 for many years. In recent years, motor vehicle auctions
4 that are open to members of the general public have
5 become common.

6 (b) Consumers that are induced through
7 advertisement and other means to attend and bid on
8 vehicles offered for sale at public auto auctions generally
9 lack the sophistication of dealers and other commercial
10 purchasers who attend and purchase motor vehicles at
11 auctions.

12 ~~(e) Current law requires any person that auctions~~
13 ~~motor vehicles at the person's place of business for a~~
14 ~~commission, money, or other thing of value, to be licensed~~
15 ~~as a dealer. However, current Vehicle Code provisions~~

16 (c) *Current Vehicle Code provisions* governing the
17 licensure of persons that sell motor vehicles at auctions
18 are primarily designed to regulate wholesale motor
19 vehicle auctions and are inadequate to properly regulate
20 persons that conduct public auto auctions or protect
21 consumers who purchase vehicles at public auto auctions.

22 (d) It is the intent of the Legislature in enacting this
23 ~~act to strengthen the ability of the Department of Motor~~
24 ~~Vehicles to properly regulate persons that conduct public~~
25 ~~auto auctions and to protect unsophisticated consumers~~
26 ~~that are induced to attend and bid on motor vehicles sold~~
27 ~~at these public auto auctions.~~

28 ~~SEC. 2. Section 5900 of the Vehicle Code is amended~~
29 ~~to read:~~

30 ~~5900. (a) Whenever the owner of a vehicle~~
31 ~~registered under this code sells or transfers his or her title~~
32 ~~or interest in, and delivers the possession of, the vehicle~~
33 ~~to another, the owner shall, within five calendar days,~~
34 ~~notify the department of the sale or transfer giving the~~
35 ~~date thereof, the name and address of the owner and of~~
36 ~~the transferee, and the description of the vehicle which~~
37 ~~is required in the appropriate form provided for that~~
38 ~~purpose by the department.~~

39 ~~(b) Except as otherwise provided in subdivision (c),~~
40 ~~pursuant to Section 408 of the federal Motor Vehicle~~

~~Information and Cost Savings Act (15 U.S.C. Sec. 1901 et seq.), the owner shall also notify the department of the actual mileage of the vehicle as indicated by the vehicle's odometer at the time of sale or transfer. However, if the vehicle owner has knowledge that the mileage displayed on the odometer is incorrect, the owner shall indicate on the appropriate form the true mileage, if known, of the vehicle at the time of sale or transfer.~~

~~Providing false or inaccurate mileage is not a violation of this subdivision unless it is done with the intent to defraud.~~

~~(c) If the registered owner is not in possession of the vehicle that is sold or transferred, the person in physical possession of that vehicle shall give the notice required by subdivisions (a) and (b). If the registered owner sells or transfers the vehicle through a dealer conducting a motor vehicle auction, the owner shall furnish the information required by subdivisions (a) and (b) to that dealer.~~

~~(d) The department shall prescribe and issue a secure power of attorney form to be used for purposes of the odometer mileage disclosure requirements of this section and Section 1988 (d)(1)(C) of Title 15 of the United States Code.~~

SEC. 3.— act to accomplish all of the following:

(1) Ensure that any person that auctions motor vehicles at the person's place of business for a commission, money, or other thing of value is licensed as a dealer.

(2) Strengthen the ability of the Department of Motor Vehicles to properly regulate persons that conduct public auto auctions.

(3) Protect unsophisticated consumers who are induced to attend and bid on motor vehicles sold at public auto auctions.

SEC. 2. Section 11713.11 of the Vehicle Code is amended to read:

11713.11. No holder of a dealer's license shall do any of the following when conducting an auction of vehicles to the public:

1 (a) Advertise that a vehicle will be auctioned to the
2 public unless all of the following information is clearly and
3 conspicuously disclosed in the advertisement:

4 (1) The date or the day of the week of the public
5 auction, or if subdivision (b) applies to the auction, the
6 date of the public auction.

7 (2) The location of the public auction.

8 (3) Whether a fee will be charged to attend the
9 auction and the amount of that fee.

10 (4) The name and dealer number of the auctioning
11 dealer.

12 (5) Whether a buyer's fee will be charged to a
13 purchaser, in addition to the accepted auction bid price,
14 and, if the fee is a set amount, the dollar amount of that
15 fee. If the buyer's fee is not a set amount, the
16 advertisement shall state the formula or percentage used
17 to calculate the fee.

18 (b) If vehicles seized by a federal, state, or local public
19 agency or authority are being advertised, advertise that
20 a vehicle will be auctioned to the public unless, in
21 addition to the information required by subdivision (a),
22 the following information is clearly and conspicuously
23 disclosed in the advertisement:

24 (1) A good faith estimate of the number of vehicles to
25 be auctioned at that date.

26 (2) A good faith estimate of the number of vehicles
27 seized by a federal, state, or local public agency or
28 authority to be auctioned at that date.

29 (c) Fail, on the day of auction, to identify each vehicle
30 seized by a federal, state, or local public agency or
31 authority, either in a printed catalog or orally, before
32 bidding begins on the vehicle.

33 (d) Include in the total price of an auctioned vehicle
34 any costs to the purchaser at the completion of the sale,
35 except the accepted auction bid price, taxes, vehicle
36 registration fees, certificate of compliance or
37 noncompliance fee not exceeding forty-five dollars (\$45),
38 any dealer document preparation charge not exceeding
39 forty-five dollars (\$45), and any buyer's fee.

(e) Charge a buyer's fee, unless the dealer conducting the auction delivers to any person permitted to submit bids, and at a time prior to accepting any bids from that person, a disclosure statement required by this subdivision and signed by that person. The disclosure statement, if the buyer's fee is a set amount, shall disclose the amount of the fee, or if the buyer's fee is not a set amount, disclose the formula or percentage used to calculate the fee. The disclosure statement shall be on a separate 8¹/₂ x 11 inch sheet of paper. Except for the information set forth in this subdivision, the disclosure statement shall not contain any other text, except as necessary to identify the dealer conducting the auction sale and to disclose the amount, percentage, or formula used to calculate the buyer's fee, and to provide for the date and the person's acknowledgment of receipt. The heading shall be printed in no smaller than 24-point bold type and the text of the statement shall be printed in no smaller than 12-point type and shall read substantially as follows:

BUYER'S FEE REQUIRED

A buyer's fee is an amount charged by the auctioning dealer for conducting the auction sale. If your bid price is accepted as the winning bid on any vehicle, you will be charged a buyer's fee in addition to the accepted bid price.

The buyer's fee that will be added to your accepted bid price is \$_____.

OR

The buyer's fee that will be added to your accepted bid price will be calculated as follows (insert percentage or other formula for calculating the buyer's fee):

The buyer's fee is part of the purchase price and is subject to sales tax.

Date: _____ Signature of Bidder _____

(f) Fail to comply with or violate this chapter, Title 2.95 (commencing with Section 1812.600) of Part 4 of Division 3 of the Civil Code, Section 2328 of the Commercial Code, or Section 535 of the Penal Code, or any law administered by the State Board of Equalization, relating to the auctioneering business, including, but not limited to, sales and the transfer of title of goods.

(g) For purposes of this section, a “buyer’s fee” is any amount that is in addition to the accepted auction bid price, taxes, vehicle registration fees, certificate of compliance or noncompliance fee, or any dealer document preparation charge, which is charged to a purchaser by an auctioning dealer.

~~SEC. 4.~~

SEC. 3. Section 11713.14 is added to the Vehicle Code, to read:

11713.14. (a) Notwithstanding any other provision of law, a person who purchases a vehicle that is sold through a dealer at an auction of vehicles open to the general public shall have the same rights and remedies against the dealer who conducts the auction sale as if that dealer were the owner and seller of the auctioned vehicle. The purchaser’s rights and remedies are in addition to any right or remedy he or she may have against an owner of a vehicle sold at a public auto auction.

(b) If any claim or action is filed against a dealer pursuant to subdivision (a) and the vehicle that is the subject of the claim or action was owned by a person other than the dealer at the time of sale by auction, the owner of the vehicle that consigned it to the dealer shall indemnify the dealer for any liability resulting from misrepresentations or other misconduct by the consignor.

(c) A purchaser’s rights and remedies under this section may not be waived or modified by an agreement or by a recharacterization of the sales transaction.

~~SEC. 5.—~~

SEC. 4. Section 11729 of the Vehicle Code is amended to read:

11729. ~~Any~~ (a) Except as provided in subdivision (b), any dealer engaging in a consignment with an owner not

licensed as a dealer, manufacturer, manufacturer branch, distributor, or a distributor branch licensed under this code, and the consignment is not otherwise prohibited by this code, shall execute a consignment agreement as prescribed by Section 11730. The failure of a dealer, when required under this section, to complete and comply with the terms of the prescribed consignment agreement for any vehicle which the dealer agrees to accept on consignment, or to pay the agreed amount to the consignor or his or her designee within 20 days after the date of sale of the vehicle, is cause for suspending or revoking the license of the dealer under paragraph (10) of subdivision (a) of Section 11705.

(b) (1) A dealer conducting retail auction sales on behalf of a fleet owner shall execute a consignment agreement applicable to all vehicles consigned for sale during the term of the agreement which contains, at a minimum, substantially all of the terms, phrases, conditions, and disclosures required by Section 11730, except the following are not required:

(A) The description of a specific vehicle by year, make, identification number, license, state, or mileage.

(B) The information contained in paragraph (4) of subdivision (b) of Section 11730.

(2) If mutually agreeable, in lieu of the requirements of paragraph (7) of subdivision (b) of Section 11730, the consignor may provide the documents necessary to transfer the ownership of the vehicle to the consignee prior to the auction being held.

(3) For purposes of this subdivision, "fleet owner" is either of the following:

(A) A person who is the registered or legal owner of 25 or more vehicles registered in this state and is the owner, as recorded in the department's records, of the vehicles consigned for sale to the dealer.

(B) A bankruptcy trustee who owns or has legal control of the vehicles consigned for sale to the dealer, government agency, or financial institution.

SEC. 5. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California

1 Constitution because the only costs that may be incurred
2 by a local agency or school district will be incurred
3 because this act creates a new crime or infraction,
4 eliminates a crime or infraction, or changes the penalty
5 for a crime or infraction, within the meaning of Section
6 17556 of the Government Code, or changes the definition
7 of a crime within the meaning of Section 6 of Article
8 XIII B of the California Constitution.

